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FILED  
TULARE COUNTY SUPERIOR COURT  
VISALIA DIVISION

MAR 02 2015

LARAYNE CLEEK, CLERK

BY MARCELLA HERNANDEZ

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COUNTY OF TULARE and TULARE  
COUNTY BOARD OF SUPERVISORS

SUPERIOR COURT OF THE STATE CALIFORNIA  
FOR THE COUNTY OF TULARE

SIERRA CLUB,

Petitioner,

v.

COUNTY OF TULARE, TULARE  
COUNTY BOARD OF SUPERVISORS,  
and DOES 1-25,

Respondents.

CASE NO. 249061

Action Filed: September 28, 2012  
Hearing on Writ Petition:

~~PROPOSED~~ JUDGMENT  
PURSUANT TO STIPULATED  
SETTLEMENT

(CEQA Matter Under Public Resources  
Code § 21000, et seq.)

Time:  
Date:  
Dept: 1  
Judge: Hon. Melinda Reed

BY FAX

1 WHEREAS, Petitioner Sierra Club ("Petitioner" or "Sierra Club") and Respondents  
2 County of Tulare and Tulare County Board of Supervisors ("County" or "Respondents")  
3 have agreed to the Stipulated Settlement attached hereto as Exhibit A and incorporated  
4 herein by this reference, and;

5 Good cause appearing, it is ORDERED that the Stipulated Settlement is entered as the  
6 Final Judgment in this matter. The Stipulated Settlement is intended to serve in lieu of any  
7 determination by this Court as to the merits of Petitioners' allegations in the litigation.  
8 Petitioners' actions are hereby dismissed with prejudice, except that jurisdiction is retained  
9 for the limited purposes set forth in Section XV.3 of the Stipulated Settlement until  
10 expiration of the Stipulated Settlement.

11  
12 **IT IS SO ORDERED.**

13  
14 DATED: 32, 2015

15 **Melinda M. Reed**

16 **JUDGE OF THE SUPERIOR COURT**

17  
18 W:\C\362\005\00349466.DOC



## STIPULATED SETTLEMENT

This Stipulated Settlement ("Settlement") is entered into by the parties set forth below for the purpose of completely resolving Case No. VCU 249061 – Petition for Peremptory Writ of Mandate, Superior Court, State of California, County of Tulare, Visalia Division challenging the adoption of Tulare County General Plan 2030 Update and certification by the County of Tulare of the environmental impact report for the General Plan Project.

This Settlement is made and effective this \_\_\_\_ day of 2015 (the "Date of Execution") by and among certain parties to Case No. 249061, namely the Sierra Club ("Sierra Club" or "Petitioner") and the County of Tulare, a political subdivision of the State of California and the Board of Supervisors of the County of Tulare (collectively "County").

Sierra Club and County are collectively referred to herein as the "Parties" and individually as a "Party." This Settlement is intended to resolve the outstanding legal disputes between the Parties without further litigation and serve in lieu of any determination by the Court as to the merits of Petitioner's allegations in the case. Upon execution of this Settlement by the Parties, the Parties shall request, pursuant to Code of Civil Procedure Section 664.6, that the Court retain jurisdiction over this case solely for the purpose of enforcing the mutual obligations incurred by the Parties as specified by the enforcement provisions in this Settlement.

### RECITALS

**WHEREAS**, Sierra Club is a California non-profit environmental organization;

**WHEREAS**, County is a public entity organized and existing under the laws of the State of California and the Tulare County Board of Supervisors (County Board) is the governing body of the County;

**WHEREAS**, the Sierra Club has not identified Respondent Does 1-25 in Case No. VCU249061;

**WHEREAS**, Sierra Club filed a Petition for Writ of Mandate ("Petition"), in the State of California Superior Court, County of Tulare against County on September 28, 2012, which Petition is designated as Case No. 249061 (the "Litigation") generally challenging the adoption of the General Plan 2030 Update Project (GPU Project) and certification by the County of the General Plan 2030 Update Environmental Impact Report (GPU EIR) and seeking to set aside the adoption of the GPU Project.

**WHEREAS**, on August 28, 2012, the County Board certified GPU EIR (State Clearinghouse No. 2006041162) prepared by the County under the California Environmental Quality Act ("CEQA," Public Resources Code Section 21000 et. seq.), which analyzed the environmental impacts of the GPU Project.

**WHEREAS**, on August 28, 2012, the County Board adopted Resolution 2012-0696 certifying the GPU EIR and adopting the CEQA Findings of Fact, Statement of



Overriding Considerations and Mitigation Monitoring and Reporting Program for the GPU EIR.

WHEREAS, on August 28, 2012, the County Board also adopted Resolution No. 2012-0697 adopting the GPU Project.

WHEREAS, the Parties have mutually agreed that settlement is the most efficient and practical way to resolve the Litigation. Without any Party admitting or denying the truthfulness of any of the allegations or claims raised between and among the Parties and without accepting any liability arising out of such claims, the Parties now intend to settle the Litigation in its entirety on the terms and conditions set forth in this Settlement.

WHEREAS, the Parties have negotiated in good faith and agreed to the terms of this Settlement, including Attachments A- I attached hereto.

**Stipulated Settlement Provisions**

NOW, THEREFORE, in consideration of the mutual benefits of this Settlement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**I. Incorporated by Reference**

1. The recitals set forth above are true and correct and incorporated by this reference as if set out in full.
2. The attachments referred to in and attached to this Settlement are incorporated by reference as if set out in full.

**II. Purpose**

1. This Settlement is intended to settle the Litigation, as otherwise provided herein.

**III. Settlement Overview**

**No Admission of liability.**

1. This Settlement is entered into by the Parties without any admission of liability by any Party.

**Mutual Consideration.**

2. The commitment by Sierra Club to abide by the terms of this Settlement is consideration for County's commitment to abide by the terms of this Settlement. County's commitment to abide by the terms of this Settlement is consideration for the commitment by Sierra Club to abide by the terms of this Settlement.

#### **IV. Climate Action Plan (CAP)**

##### **A. Terms:**

###### **Updated Emissions Inventory**

1. The County will, within one year of execution of Settlement, update its Climate Action Plan ("CAP") Greenhouse Gas Emissions Inventory (Emissions Inventory) in a manner in substantial conformance with Task 1 of the scope of work set forth as Attachment A.

###### **Expanded Emissions Inventory:**

2. The County will add an inventory of greenhouse gas emissions directly related to County's government operations and specified Community Inventory Source Categories in the CAP in substantial conformance with Tasks 1.1 and 1.2 of the scope of work, respectively as set forth as Attachment A.

###### **Annual Review:**

3. Beginning in 2016, the County will annually review ("Annual Review") the Emissions Inventory including per capita Vehicle Miles Traveled ("VMT"), in a manner in substantial conformance with Task 3 of the scope of work set forth in Attachment A.

4. If the Annual Review concludes there is an increase in GHG emissions or VMT for two (2) consecutive years, the County Board will hold a noticed public hearing to consider staff recommendations to reduce GHG/VMT's. The County Board will make findings as to staff recommendations. The County Board reserves the right to accept or reject staff recommendations.

###### **Comprehensive Inventory Update:**

5. Following every four (4) year Regional Transportation Plan update by Tulare County Association of Governments, the County will conduct a major inventory update ("Comprehensive Inventory Update"). The first Comprehensive Inventory Update will be prepared within one year of the execution of the Settlement. Each Comprehensive Inventory Update will be in substantial conformance to Task 1.3 of the scope of work set forth in Attachment A.

##### **B. Remedies:**

1. In the event Sierra Club alleges County has not substantially performed its Settlement obligations as identified in this CAP Section, Sierra Club retains the right to pursue the enforcement of Settlement pursuant to the procedures set forth in Section XV.

2. Litigation Reopeners as defined in Section XV.3.B.i.(b) will be specifically limited for Section A.1, 2 and 4 above to Petition Paragraphs 49 and 50, excluding "etc." from paragraph 49.

3. As to Section A.3 above (Annual Review) and Section A.5 above (Comprehensive Inventory Update), Sierra Club's sole remedy after satisfying the Right to Cure provisions in Section XV.2.A and Mediation pursuant to Section XV.2.B is specific performance. There is no right to reopen the Litigation pursuant to Sections A.3 and A.5.

**V. Climate Action Plan (CAP) for New or Expanded Dairies**

**A. Term:**

1. County will, by the end of 2015, release a draft Animal Confinement Facilities Plan (ACFP) Update, associated Draft Environmental Impact Report (ACFP DEIR) and draft Climate Action Plan (ACFP CAP) that will address: (1) greenhouse gas ("GHG") emission reduction targets associated with dairies, and (2) approaches for reducing dairy related GHG emissions. In addressing (1) and (2) above, the County is not committed to adopting or imposing any particular mitigation, or GHG emission reductions targets. The term "address" or "addressing" as used in this paragraph is defined as "to speak to". The County may extend this deadline twice, not to exceed 6 months each, upon written notice explaining the need to extend to the Sierra Club.

**B. Remedies:**

1. Sierra Club's sole remedy as to the release of the ACFP, ACFP EIR and ACFP CAP is specific performance, subject to satisfying the Right to Cure provisions in Section XV.2.A and Mediation pursuant to Section XV.2.B is specific performance. There is no specific performance remedy as to whether the County has addressed (1) and (2) in Section V.A above.

2. There is no right to reopen the Litigation pursuant to this Section V.

**VI. Solar Installation Ordinance**

**A. Term:**

1. County will, within one year from the Date of Execution of the Settlement, consider an amendment to the Ordinance Code of Tulare County, Section VII, Chapter I, in substantial conformance to Attachment B.

**B. Remedies:**

1. In the event Sierra Club alleges County has not adopted an amendment to Ordinance Code of Tulare County, Section VII, Chapter I in substantial conformance to

Attachment B, Sierra Club retains the right to pursue the enforcement of Settlement pursuant to the procedures set forth in Section XV. Litigation Reopeners will be specifically limited to Petition Paragraph 66, excluding the fourth sentence which reads "The omission of any specific target for reducing GHG emissions from dairies and feedlots, which are one the biggest source of GHG emissions in the County, is particularly glaring."

#### **VII. Diesel Truck Idling Ordinance**

##### **A. Term:**

1. County will, within one year from the Date of Execution of the Settlement, consider adopting an ordinance regulating diesel truck idling in substantial conformance to Attachment C.

##### **B. Remedies:**

1. In the event Sierra Club alleges County has not adopted a Truck Idling ordinance in substantial conformance to Attachment C, Sierra Club retains the right to pursue the enforcement of Settlement pursuant to the procedures set forth in Section XV. Litigation Reopeners will be specifically limited to Petition Paragraphs 59 and 62, both paragraphs limited to the specific examples pled.

#### **VIII. Recharge Basin Consultation Process**

##### **A. Term:**

1. County will, within one year from the Date of Execution of the Settlement, consider adopting a resolution in substantial conformance with Attachment D.

##### **B. Remedies:**

1. In the event Sierra Club alleges County has not adopted a resolution in substantial conformance with Attachment D, Sierra Club retains the right to pursue the enforcement of Settlement pursuant to the procedures set forth in Section XV. Litigation Reopeners would be specifically limited to Paragraphs 106 and 107, and Paragraph 105, first sentence in its entirety and third sentence, excluding the portion of third sentence which reads "and there is no evidence the County has conducted annual land use element reviews as required". The second sentence of paragraph 105 is also excluded. Litigation Reopeners do not apply to the review of private development applications as referenced in Attachment D.



**IX. Zero/Low Emissions Fleet**

**A. Term:**

1. County will continue to replace its existing fleet with zero and low-emission vehicles consistent with County Administrative Regulation No. 30 (Resolution No, 2006-9218), as may be amended from time to time.

**B. Remedies:**

1. In the event Sierra Club alleges County has not substantially performed its Settlement obligations as identified in this Zero Emissions Fleet Section, Sierra Club retains the right to pursue the enforcement of Settlement pursuant to the procedures set forth in Section XV. Litigation Reopeners will be specifically limited to Petition Paragraphs 59 and 62, both paragraphs limited to the specific examples pled.

**X. Flood Information**

**A. Terms:**

1. The County will, within one (1) year of its next Housing Element update, currently due September 2015, review the County's Safety Element under Government Code Section 65302(g)(2)(A) as follows:

A. The County will direct staff to review the Safety Element for any updates needed pursuant to Government Code Section 65302(g)(2)(A) [floods] and (g)(3)[wildland fires] and to prepare a scope of work to be submitted to the Board for review with a request that the Board initiate a General Plan Amendment to update the Safety Element, if necessary.

B. The County will complete the process and consider any necessary amendments to the Safety Element within one (1) year after the adoption of its next Housing Element update, currently due in September 2015. If, for whatever reason, the Housing Element update is not certified by that time, the County will complete the process and consider any necessary amendments to the Safety Element no later than March, 2017.

2. A workplan or scope of work as used for the General Plan 2030 Update or similar mechanism identifying any needed implementation measures and specifying estimated completion times will be considered by the County Board at the same time as a General Plan amendment of the Safety Element. The workplan or scope of work will be made available for public review and comment ten (10) days prior to approval. Public notice of its availability will be given by posting on the web and mailing to Sierra Club.

3. The Flood Control Master Plan is Chapter 15 of Part I the County's General Plan 2030 Update and, therefore, an Element of the County's General Plan. As part of the process identified in Section 1. Above, the County will review the Flood

Control Master Plan policies for consistency with any proposed changes to the Safety Element policies.

4. The County will provide links to both the Federal Emergency Management Agency's flood plain map website and the California Department of Water Resources flood plan map website on its Resource Management Agency's Public Works website. The County will also provide user-friendly directions on the County's website for accessing these federal and state flood plain map websites. In addition, the County will provide, along with user-friendly directions for accessing such flood information, links to the flood information contained in its existing, updated or newly adopted, online Community Plans and newly adopted, online Hamlet Plans no later than 120 days after the applicable statute of limitations has run on any legal challenge to the new or updated Community Plan or Hamlet plan. This information will be "indexed" on the County's website as "flood hazard information" under the website's search function. This information will be for informational purposes only.

5. The County will consider adopting a policy regarding flood prone areas in substantial conformance to Attachment E.

6. The County will consider recommending that the Flood Commission consider a public notice policy in substantial conformance to Attachment F.

**B. Remedies:**

1. In the event Sierra Club alleges County has not substantially performed its Settlement obligations as identified in Sections A.1 through 3 above, Sierra Club's sole remedy after satisfying the Right to Cure provisions in Section XV.2.A and Mediation pursuant to Section XV.2.B is specific performance. There is no right to reopen the Litigation for alleged lack of substantial performance of Sections A.1 through 3 above.

2. In the event Sierra Club alleges County has not adopted policies in substantial conformance with Attachments E and F, Sierra Club retains the right to pursue the enforcement of Settlement pursuant to the procedures set forth in Section XV. Litigation Reopeners will be specifically limited to Petition Paragraphs 37 limited to sixth and seventh bullets as pled only, 45 as to wildfire and flooding only, 54, 105 limited to first sentence pled, and 107.

**XI. Agricultural Conservation Easement Program**

**A. Term:**

1. The County will, within one year from the Date of Execution of Settlement, consider adoption of an Agricultural Conservation Easement Program in substantial conformance to Attachment G.

**B. Remedies:**

1. In the event Sierra Club alleges County has not adopted an Agricultural Conservation Easement Program in substantial compliance with Attachment G, Sierra Club retains the right to pursue the enforcement of Settlement pursuant to the procedures set forth in Section XV. Litigation Reopeners will be specifically limited to Paragraphs 58 and 64, the latter limited to the second bullet only which reads "Policy AQ-1.6 and Implementation Measure #15 do not include any enforcement mechanism or performance standards to determine the quality and acreage of any conservation easement that may be required as mitigation for conversion of agricultural lands."

**XII. ISR and CEQA**

**A. Term:**

1. The County will, within one year from the Date of Execution of Settlement, consider adopting a resolution in substantial conformance to Attachment H.

**B. Remedies:**

1. Remedy: In the event Sierra Club alleges County has not adopted a resolution in substantial compliance with Attachment H, Sierra Club retains the right to pursue the enforcement of Settlement pursuant to the procedures set forth in Section XV. Litigation Reopeners will be specifically limited to Paragraphs 42, excluding its reference to dairies and feedlots, and 62, limited to the specific examples pled.

**XIII. New Town Land Use Review**

**A. Term:**

1. The County will, within one year from the Date of Execution of Settlement consider adopting a resolution in substantial conformance to Attachment I.

**B. Remedies:**

1. Sierra Club's sole remedy for this New Town Land Use Review Section after satisfying the Right to Cure provisions in Section XV.2.A and Mediation pursuant to Section XV.2.B is specific performance. There is no right to reopen the Litigation pursuant to this Section XIII.

**XIV. County Processing and Consideration of Proposed Actions**

1. The processing, consideration, adoption, effectuation, and/or establishment, if any, of each and every obligation or action contemplated in Settlement including Attachments A-I ("Proposed Actions") shall be in accordance with applicable law, including but not limited to, the Government Code and the Public Resources Code.

2. Nothing in this Settlement shall be construed as a waiver of the County's police powers or third parties' due process rights, if any.

**XV. Enforcement of Settlement**

1. Mutual Desire to Avoid Further Litigation and Jurisdiction to Enforce Settlement.

A. The Parties have entered into this Settlement to avoid litigation. Enforcement of this Settlement is to be brought solely through the procedures set forth in this Section, which are designed to avoid resorting to court enforcement in the first instance, and, if resort is necessary, to provide simple, straight forward and predictable relief.

B. In order to provide a simple, straightforward and predictable method of enforcement of this Settlement, the Parties shall request that the Tulare County Superior Court, Visalia Division retain jurisdiction of this case solely for the limited purpose of enforcing the mutual promises of the Settlement pursuant to the procedure set forth in this Section.

2. Preliminary Enforcement Procedures

A. Right to Cure. If any party believes another Party has not substantially performed one or more of its obligations under this Settlement (also referred to as "default"), the Party shall provide written notice to the other Party of the alleged default; offer to meet and confer in a good faith effort to resolve the issue; and provide the other Party 90 days to cure the alleged default commencing at the time of receipt of the notice of a properly detailed written default notice. ("Notice to Cure Default") The 90-day period to cure shall be tolled if resolution of the issue triggers the need for CEQA compliance or a public hearing. Notice to Cure Default given pursuant to this Section shall specify in reasonable detail the nature of the alleged default and, where appropriate, the manner in which the alleged default satisfactorily can be cured. Parties may mutually agree to a larger period of time to cure.

B. Mediation. If an alleged default in performance has not been cured during the 90-day period as provided in Section XV.2.A or reasonably thereafter as agreed to by the parties, the dispute shall be submitted to mediation prior to judicial enforcement. The Parties shall continue utilizing the services of JAMS, Ms. Lizbeth Hasse and the Honorable Judge Daniel Weinstein (Ret.) in particular, unless another mutually agreed upon mediator is chosen by the Parties. In the event Ms. Hasse and Judge Weinstein (Ret.) are unavailable and the parties cannot agree upon a mediator, the judicial officer of Tulare County Superior Court, Visalia Division retaining jurisdiction of this case ("Judicial Officer") shall designate a mediator.



The Parties will commence mediation within 30 days after notice of the mediation and designation of the mediator and shall not continue mediation for more than thirty (30) days at a time, unless mutually agreed upon by both Parties. The Parties will share in the cost of the mediation services with Sierra Club, each and every time an alleged default in performance is submitted, contributing 1/3 of the basic cost of a mediation session, up to the equivalent of a one day, ten-hour session mediation and County bearing the balance of the expense of any such mediation. The mediator, based on the merits of the claims and defenses submitted, may fairly assess a larger proportion of the costs to either entity, or in the event of the filing of a frivolous claim or defense, may assess the entirety of the costs of mediation of that claim to the filing party.

Determination of the meritorious or "frivolous" nature of a claim for this Section XV.2.B shall be made by the mediator acting as an arbitrator for this purpose. The arbitrator's determination shall generally be guided by California and federal legal standards. The fact that the arbitrator presided as mediator during the dispute resolved by this Settlement or in any further disputes or litigation to enforce Settlement shall not provide any basis to seek the disqualification of him or her as the arbitrator for this determination, whether pursuant to CCP Section 1281.9 or otherwise, and the parties waive the right to do so. The fact that the arbitrator presided as mediator shall not provide any basis for the award to be vacated or modified, and the parties agree not to seek to vacate or modify the award nor to oppose confirmation on such ground. With the exception of the cost of the mediator(s)' services, which shall be shared, each Party shall bear its own fees and costs related to mediation except as otherwise provided.

### 3. Judicial Enforcement of Settlement

A. Judicial Officer Determination: Subject to the restrictions otherwise set forth in this Settlement, after expiration of the cure period provided in Section XV.2.A and Mediation pursuant to Section XV.2.B, any Party may request that the Judicial Officer determine whether one Party has not substantially performed its obligations under this Settlement.

#### B. Judicial Remedies:

- i. In the event Sierra Club alleges County has not substantially performed one or more of its obligations set forth in Section(s) IV-XIII above, and the Judicial Officer concurs, County has the option of either of the following remedies:
  - (a) Specific performance (reconsidering the contested matter) or
  - (b) Allowing Sierra Club to reopen the Litigation limited to only those applicable paragraphs of the petition as

specifically set forth for the contested term(s) in Sections IV-XIII, above ("Litigation Reopeners").

- ii. In the event County elects the remedy of specific performance as provided in Section XV.3.B.i.(a) above, and Sierra Club alleges County's specific performance still does not cure the alleged default, Sierra Club retains the right to reopen the Litigation, limited to only the applicable Litigation Reopener(s) for the contested terms as set forth in Sections IV-XIII above.
- iii. If, on the other hand, the Judicial Officer finds that County has substantially performed pursuant to Sections IV-XIII, the dispute is resolved and Sierra Club is not be permitted to reopen the Litigation
- iv. In the event County alleges Sierra Club has not substantially performed its obligations under the Settlement and the Judicial Officer concurs, County's remedy is specific performance.

#### **XVI. Attorney's Fees for Judicial Enforcement**

If, following exhaustion of the procedures set forth in Section XV.1, 2 and 3 above, the court concurs with the Sierra Club's contention that the County has failed to substantially fulfill one or more of its obligations under the terms of the Settlement Agreement, Sierra Club shall be entitled to reasonable attorney's fees regardless the County's choice of remedy. The amount of attorney's fees shall be decided by the court, based on the total number of hours required to unsuccessfully mediate the issue and the attorney time necessary to litigate the issue before the court. No multiplier shall be awarded.

#### **XVII. Effect of Modification of Party's Powers**

1. In addition to the specific provisions of this Settlement, the County shall not be deemed to be in default if the County's powers are modified by state or federal legislation, or otherwise in any way that precludes County from performing its obligations under this Settlement.

#### **XVIII. Attorney's Fees and Costs**

1. Sierra Club has incurred attorney's fees and costs in litigating and drafting this Settlement.

A. As agreed by the Parties, County will pay to Sierra Club \$135,000, total for such fees and costs incurred.

B. Sierra Club has submitted records documenting time and expenses and costs incurred on the litigation and settlement sufficient to demonstrate that the award is reasonable and no multiplier has been applied.

C. County shall pay to Sierra Club the amount specified in Section XVIII.1.A, above, within sixty (60) days of the Date of Execution of this Settlement.

**XIX. Disposition of the Litigation**

1. Within ten (10) days of the Date of Execution of this Settlement, the Sierra Club shall file in Tulare County Superior Court a proposed Judgment by Stipulation pursuant to the Settlement, in a form in substantial compliance with Attachment J.

2. Notwithstanding any other provision of this Settlement, Sierra Club may dismiss the Litigation with prejudice at any time.

**XX. Third Party Lawsuits**

1. By entering into this Settlement, all parties acknowledge it is in their best interest to ensure that the General Plan Project and GP Project EIR, and all provisions of this Settlement are upheld against legal challenge by any other party. The County agrees to notify Sierra Club within ten (10) business days of being served with any legal challenge to this Settlement, including any legal challenge to one or more of the Attachments to this Settlement. Under all circumstances, the County retains the right to exercise its own discretion and judgment in the defense of a legal challenge. In the event a court of competent jurisdiction rules any part of this Settlement, including Proposed Actions, invalid, the County shall be relieved of fulfilling its obligations as to that portion or portions held to be invalid.

**XXI. Release of Claims**

1. The Parties intend and agree that this Settlement shall, when fully implemented in accordance with the provisions thereof, be effective as a full and final accord and satisfaction and general release of and from all claims in the Litigation.

A. Upon execution of this Settlement, and consistent with this Settlement, Sierra Club shall be conclusively deemed to have waived and released County, the County Board, and Does 1 through 25, and their respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors (the "County Released Parties") from all rights, actions, claims, debts, demands, costs, contracts, allegations, liabilities, obligations, and causes of action, whether known or unknown, including the Litigation, at law or in equity, which Sierra Club had, or now has as of the Date of Execution of this Settlement, against County Released Parties, or any of them, arising from or relating to the certification of the GPU EIR and approval of the GPU as adopted by the County Board on August 28, 2012, including, without limitation, all costs and fees incurred by Sierra Club in, or arising from, such actions (the "County Released

Claims"). Sierra Club shall conclusively be deemed to have waived and relinquished to the fullest extent that it may lawfully do so, all rights and benefits afforded by Section 1542 of the Civil Code of the State of California ("Section 1542"), which states as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." This release shall not be construed to limit the rights of Sierra Club to institute legal action to seek specific performance of this Settlement or to enforce the Settlement as otherwise specifically called out in the Settlement.

B. The Parties, by executing this Settlement, assume the risk that they are unaware of the subject matter of this Settlement, or are otherwise mistaken as to relevant facts, and acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true concerning the County Released Claims and other matters contained in or concerning this Settlement. The Parties nevertheless agree and intend this Settlement to be a complete release of the County Released Claims, and to settle all disputes related to the Released Claims, known or unknown, suspected or unsuspected, that have existed, now exist, or may now exist between or among the Parties, unless otherwise specifically provided in this Settlement. Unless otherwise specified in this Settlement, the Parties waive any and all rights under California Civil Code Section 1542 and/or any successor section to it with respect to the Released Claims. The Parties hereby acknowledge and represent that (1) they understand the significance and the consequences of such specific waiver of unknown claims and hereby assume full responsibility for any injuries, damages, lawsuit or liabilities that it may incur, both now and hereafter, from the waiver of said unknown claims, (2) they may discover facts different from, or in addition to, those facts that they now know or believe to be true, and agree that the Settlement and the releases contained herein shall be and remain effective in all respects notwithstanding any subsequent discovery of different or additional facts, (3) they have undertaken their own independent investigation of all the facts relating to the matters being released herein, and in entering into this Settlement and granting the releases contained herein, are not relying on any representation, warranty, or statement of any other Party except as expressly provided herein, and (4) this waiver is an essential and material term of this Settlement.

1. Sierra Club, understanding the above and the provisions of this Settlement, intends by this Settlement, and with and upon the advice of its own independently selected counsel, to release fully, finally and forever all County Released Claims, unless as otherwise specified in this Settlement.

2. Sierra Club will not directly or indirectly file, prosecute, bring, encourage participate in, facilitate or advance any suit, claim or legal action of any kind against County Released Parties based upon any County Released Claims, including Proposed Actions. Sierra Club covenants against filing any administrative proceedings and to



dismiss or cause to be dismissed any administrative proceedings and/or appeals already brought as of the date of this Settlement.

3. This Settlement may be pleaded as a defense to and may be used as the basis for an order of specific performance ordering the dismissal by Sierra Club of any County Released Claims in any judicial or administrative proceeding against County.

4. Any evidence submitted in court by Sierra Club to prove or disprove a violation of this Settlement may not be utilized by Sierra Club as evidence in their underlying CEQA claims/reopeners, which shall be limited to the contents of the administrative record certified on April 10, 2013. Any request by Sierra Club to take judicial notice or citation in their briefs to documentation submitted to prove or disprove compliance with this Settlement shall not be considered by the Court and this subsection can be cited as a defense.

## **XXII. Representations and Warranties**

1. Each of the Parties represents, warrants, and agrees as follows:

A. The individuals signing and executing the Settlement on behalf of the Parties have the right, power, legal capacity, and authority to do so, and no further approval or consent of any person, office, board, or other person or entity is necessary.

B. Each of the Parties has received independent legal advice from its attorneys with respect to the advisability of making the settlement provided for herein and with respect to the advisability of executing this Settlement. Each Party's attorney has reviewed the Settlement, made any desired changes, and signed the Settlement to indicate that the attorney approved the Settlement as to form. Each of the Parties has been fully advised by its attorneys with respect to its rights and obligations under this Settlement and understands those rights and obligations.

C. Except for the statements expressly set forth in this Settlement, no Party, or representative or attorney of or for any Party, has made any statement or representation to any other Party regarding a fact relied upon by the other Party in entering into this Settlement, and no Party has relied upon any statement, representation, or promise, written or oral, of any other Party, or of any representative or attorney for any other Party, in executing this Settlement or in making the settlement provided for herein.

D. Each of the Parties, or a Party representative, has carefully read the Settlement, knows and fully understands the contents thereof, and has made such investigation of the facts pertaining to the settlement and this Settlement and of all matters pertaining hereto as it deems necessary or desirable.

E. Except as otherwise expressly represented, warranted or provided in this Settlement, each of the Parties expressly assumes the risk that (i) it may

hereafter discover facts in addition to or contrary to those it believed to exist or relied upon in entering into this Settlement, including, without limitation, unknown or unanticipated claims which, if known by either Party on the date of execution, may have materially affected the Party's decision to execute this Settlement, (ii) it may have misunderstood matters relevant to negotiating and entering into this Settlement, and (iii) another Party may have negligently misrepresented or negligently failed to disclose facts pertinent to the Settlement. The Parties agree that, should unknown or unanticipated claims, misunderstandings, mistakes, unintentional misrepresentations, or nondisclosures exist, the Parties intend that this Settlement shall thereafter continue in full force and effect and shall not be subject to rescission or rejection for any reason, except as specifically provided in this Settlement.

F. This Settlement is contractual, the result of negotiations between the Parties, and intended to be final and binding as between the Parties, and is further intended to be effective as full and final accord and satisfaction between the Parties. Each of the Parties hereto relies on the finality of this Settlement as a material factor inducing that Party's execution of this Settlement.

G. The Parties shall, together and/or individually, execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Settlement.

H. Each of the Parties to this Settlement agrees that such Party will not take any action that would interfere with the performance of this Settlement by any of the Parties, or that would adversely affect the rights, or interfere with the obligations, provided for herein.

### **XXIII. General Provisions**

1. **No Admission.** The Parties explicitly acknowledge and covenant that this Settlement represents a settlement of disputed rights and claims and that, by entering into this Settlement, no Party hereto admits or acknowledges the existence of any liability or wrongdoing, all such liability being expressly denied. Neither this Settlement, nor any provision contained herein, nor any provision of any related document, shall be construed as any admission or concession of liability, of any wrongdoing, or of any preexisting liability.

2. **Governing Law.** This Settlement shall be governed by and interpreted and construed in accordance with the laws of the State of California.

3. **Construction.** This Settlement shall be construed according to the fair and plain meaning of its terms. Nothing in this Settlement shall be construed to limit or restrict County's constitutional police power or land use authority in any way with respect to future legislative, administrative, or other actions by County.

4. **Integration.** This Settlement constitutes a single integrated written contract, and represents and expresses the entire Settlement and understanding of the

Parties with respect to the subject matter contained herein. All prior and contemporaneous discussions and negotiations, oral or written, between the Parties are merged and integrated into, and are superseded by, this Settlement. No covenants, Settlements, representations, or warranties of any kind whatsoever, whether express or implied in law or fact, have been made by any Party hereto, except as specifically set forth in this Settlement or in any amendment, contemporaneous or subsequent written Settlement between the Parties.

5. **Severability.** Should any provision of this Settlement be held or found void, voidable, unlawful or, for any reason, unenforceable by a court of competent jurisdiction, the Parties shall work together to determine whether any other provisions remain binding and enforceable. If the parties cannot agree on which provisions remain binding and enforceable, any party may request mediation to resolve the dispute, as provided in Section XV.2.B or institute a legal action to reform the Settlement. Such a remedy may not provide additional opportunities to reopen the Litigation unless voluntarily agreed to by the County.

6. **No Waiver.** The failure of any Party hereto to enforce the rights conferred or reserved to it in this Settlement, or insist on performance of any of the terms and conditions of this Settlement shall not void any of the rights, terms or conditions, constitute a waiver or modification of any rights, terms or conditions, nor be construed as a waiver or relinquishment by any Party of the performance of any such rights, terms or conditions. No custom or practice which exists or arises between or among the Parties in the course of administration of this Settlement will be construed to waive or modify any Party's rights to (1) insist upon the performance by any other Party of any covenant and/or promise in this Settlement, or (2) exercise any rights given to it on account of any breach of such covenant and/or promise.

7. **Amendment.** This Settlement may be modified or amended only by written amendment executed by all of the Parties. The Parties acknowledge that, due to the nature of the actions and obligations provided in this Settlement, it may be necessary for the Parties, from time to time, to execute additional or supplemental documentation to clarify and implement the provisions of this Settlement. The Parties agree to cooperate in good faith, and to negotiate and enter into such additional or supplemental documentation, as may be determined to be reasonably necessary and/or appropriate by the Parties. Modifications to the terms of this Settlement are permissible, so long as such actions are agreed to by all of the Parties. Any amendment, modification, additional or supplemental documentation to the Settlement must be in writing and executed by the Parties, or individuals with authority to execute such documentation on behalf of the Parties. Any amendment, modification, additional or supplemental documentation deemed necessary by the Parties shall be executed in either an original document with all signatures, or by counterparts, in the manner proscribed in Subsection (9), below.

8. **Computation of Time.** The time in which any act is to be done under this Settlement is computed by excluding the first day, and including the last day, unless the last day is a holiday or a Saturday or Sunday, and then that day is also excluded. The

term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code.

9. **Counterparts.** This Settlement may be executed in counterparts and by facsimile or electronic signatures, which, when joined together, shall constitute a full Settlement and shall be binding on the Parties, even though all signatures may not be on one original document or the same counterpart.

10. **Successors and Assigns.** This Settlement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties, including, but not limited to, their respective heirs, administrators, agents, employees, officers, and boards. This Settlement does not, expressly or impliedly confer upon any person other than the Parties, their successors or assigns, any rights or benefits under or by reason of this Settlement.

11. **Third Party Beneficiary.** This Settlement shall not create any right of action in any third party.

12. **Headings.** The descriptive headings used in this Settlement are for convenience only. They are not part of the Settlement, and should not be construed to affect the meaning of any provision of this Settlement.

13. **Good Faith Clause.** The Parties agree to cooperate fully, reasonably, and in good faith in the implementation of this Settlement. The Parties also agree to execute any and all supplemental documents, and to take all additional lawful and reasonable actions, which may be necessary or appropriate to give full force and effect to the basic terms and to fully implement the goals and intent of this Settlement.

14. **Term of Settlement.** This Settlement shall be operative from the Date of Execution for a period of ten (10) years, except that the provisions relating to Zero/Low Emission vehicles set forth in Section IX shall only be operative for a period of four (4) years. County shall be relieved of its Settlement obligation provisions relating to Section IV, CAP, in less than ten (10) years should federal, state or regional law or regulations make such County obligations invalid, illegal, preempted, unnecessary or otherwise redundant. Regardless, this Settlement shall have no further force and effect after ten (10) years.

15. **The Parties.** Having read and considered the above provisions indicate their Settlement by their authorized signatures below.

16. **Notices.** Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by overnight delivery or first class mail, postage prepaid and addressed as set forth below. . Notice sent by electronic mail shall not serve as adequate notice pursuant to this section.



**COUNTY:**

County Administrative Officer  
2800 W. Burrel Ave.  
Visalia, CA 93291  
Phone: (559) 636-5005  
Fax: (559) 733-6318

**with a copy to:**

County Counsel  
2900 W. Burrel Ave.  
Visalia, CA 93291  
Phone (559) 636-4950  
Fax: (559) 737-4319

**SIERRA CLUB:**

Gordon Nipp  
Sierra Club  
P.O. Box 3357  
Bakersfield, CA 93385

**with a copy to:**

Babak Naficy  
Law Offices of Babak Naficy  
1504 Marsh Street  
San Luis Obispo, CA 93407  
Phone: (805) 593-0926  
Fax: (805) 593-0946

1. Notice personally delivered or sent by overnight mail is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

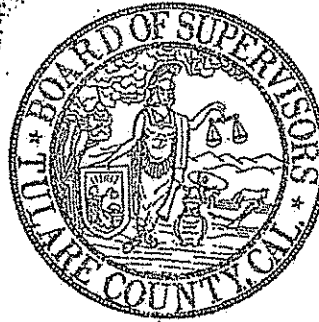
Date: 2/24/15

BY [Signature]  
Chairman, Board of Supervisors

"County"

ATTEST: JEAN ROUSSEAU  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By [Signature]  
Deputy Clerk



SIERRA CLUB

Date: \_\_\_\_\_

By \_\_\_\_\_  
TITLE \_\_\_\_\_

Approved as to Form  
County Counsel

By [Signature]  
City/Deputy

Approved as to Form  
Counsel for Sierra Club

By \_\_\_\_\_

329757

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

Date: \_\_\_\_\_

BY \_\_\_\_\_  
Chairman, Board of Supervisors

"County"

ATTEST: JEAN ROUSSEAU  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By \_\_\_\_\_  
Deputy Clerk

SIERRA CLUB

Date: 2/24/15

By Gordon Z. Hill  
TITLE Vice-Chair, Kern-Kaweah Chapter

Approved as to Form  
County Counsel

By \_\_\_\_\_  
Deputy

Approved as to Form  
Counsel for Sierra Club

By Babak Naficy  
Babak Naficy

329757



**Scope of Work for Climate Action Plan Update**

County will retain a qualified, professional consultant to perform the following Scope of Work:

***Task 1: Emission Inventory Update***

The inventory update will include three components. The first component will be an all new Government Operations Inventory to address sources under the direct control of the County of Tulare. The second component is to prepare inventories for several source categories. The third component is a Comprehensive Update of the entire inventory to provide updated baseline and forecast inventories to include the most recent vehicle miles traveled (VMT) estimates from TCAG, revisions to statewide forecasts, updates to regulations adopted by the State, and the reductions achieved by Tulare County in implementing the General Plan Update and the Climate Action Plan (CAP).

***Task 1.1: Government Operations Inventory***

The Government Operations Inventory will include an inventory of greenhouse gas emissions directly related to the County's activities ("Emissions Inventory") in the CAP Update. The Emissions Inventory will include operational emissions associated with electricity and natural gas use at County owned or operated facilities, mobile sources, and solid waste. This would include emissions from vehicles and equipment operated by the County, energy related emissions from County buildings, and emissions from solid waste facilities utilized within the County. The Government Operations Inventory is a subset of the Community Inventory, so the emissions are not added to the Community Inventory. The purpose of the inventory is to help the County identify opportunities for projects that could be implemented by Departments that would reduce emissions under the County's direct control. The Government Operations Inventory will require information from the various County Departments that are responsible for the facilities, vehicles, and buildings.

The motor vehicle inventory will identify the vehicle classifications, mileage, fuel type, and/or fuel use, and describe the type of use such as police, fire, maintenance, pool vehicle, etc. The emissions will be calculated using EMFAC 2011 or the current version approved for use at the time the project commences.

Electricity and natural gas usage can be obtained from a compilation of annual utility bills for County owned facilities to provide the greatest accuracy. The Consultant will work closely with the appropriate departments to compile the information and will provide a data needs checklist to assist in data collection.

Solid waste emissions would be estimated based on an average rate per employee or square feet of building space using averages available from CalRecycle. County internal recycling programs will be identified that would reduce the emission inventory. Emissions from solid waste in landfills will be estimated by the County's share of waste disposed of in the various landfill facilities.



**Task 1.2: Community Inventory Source Categories**

The second component is an update to the Community Inventory prepared for the General Plan Update and used in the CAP.

The Community Inventory will be updated to include propane burning for residential heating, greenwaste burning, residential woodstove and wood fireplace burning, airport and train emissions from aircraft and vehicles within the County's borders (excluding pass-through trips), fertilizer, sewer treatment, and gas flaring or otherwise explain how these activities have already been addressed by the assumptions made in the existing inventory. In addition, the Inventory will include a full update of motor vehicle emissions within the County's borders (excluding pass-through trips and City emissions). The emissions included in the inventory are normally limited to those with control or influence by the County in most cases. Emissions from wildfires are normally considered biogenic emissions and are not recommended for inclusion in the inventory. Aircraft and rail require special handling because the County will have little or no authority over the emissions from these sources. The inventories will be compiled in an inventory report similar to that included in the General Plan Update EIR and the CAP. Details regarding each inventory category update are provided below.

**Residential Propane Inventory.** Preparing a residential propane burning emission inventory will require an analysis to identify the number of units not served by a natural gas provider. This would be determined from the total number of residential units in the County minus the number of units served by the natural gas provider. A limited number of residences will be heated only by wood burning devices. An estimate of the number of units limited to wood burning devices will be developed from available sources. No surveys are proposed. Fuel use by climate zone is available from the California Energy Commission. California Air Resources Board (ARB) emission factors for propane combustion will be used to estimate the greenhouse gas emission.

**Greenwaste Burning.** Emissions from this source category will be estimated using agricultural burn data compiled by the SJVAPCD and emission factors used by the ARB in developing the State GHG inventory. The SJVAPCD agricultural burning regulations are resulting in fewer emissions from these sources as the regulations are phased in.

**Residential Woodburning.** Emissions from this source will be estimated using SJVAPCD emission inventory data used to support the development of its woodburning regulations and ARB emission factors for greenhouse gases. The type of woodburning devices installed is important because of large differences in combustion efficiency from pellet stoves, and EPA certified woodstoves, and open hearth stoves. Less wood will be consumed to provide an equal amount of heat from highly efficient devices.

**Airport Emissions.** Airport emissions are not normally included in community emission inventories because the local government has no control or regulatory authority over the operation of aircraft. Emissions can be estimated based on the number of take offs and landings and the emission factors for the various types of aircraft that operate in the County. A population-based share of the emissions from all County airports is proposed. Emissions from activities like crop dusting will require research to identify if the amount of activity is available.



**Train/Locomotive Emissions.** Rail emissions are normally not included in community emission inventories because local government has no regulatory control or ability to influence emissions from this source. Locomotive emissions can be estimated based on activity data used by the San Joaquin Valley Air Pollution Control District (SJVAPCD) ozone and particulate matter inventories and EPA greenhouse gas emission factors for locomotives. Separating trains serving Tulare County from the SJVAPCD inventory that includes through trains may be difficult. Data for local rail freight services will be needed for this task to provide a realistic estimate for this source category.

**Fertilizer Emissions.** Emissions from fertilizer application will be estimated using ARB's emission inventory methodology and California Department of Food and Agriculture fertilizer application data. The primary greenhouse gas of concern for fertilizer application is  $N_2O$ .

**Sewage Treatment and Gas Flaring.** Anaerobic decomposition of sewage produces methane that is a greenhouse gas and the methane is often burned using flares as a safety measure and to remove hazardous components of the gas such as hydrogen sulfide ( $H_2S$ ). The inventory will identify wastewater treatment facilities serving County development and which ones employ flares and which ones burn the biogas produced for productive uses such as electricity generation or process heat. ARB emission factors for wastewater treatment plants will be used for this category. The volume of waste processed by the facilities will be needed for the inventory. Inventories for larger facilities may have already been prepared and would be utilized if available.

### ***Task 1.3: Comprehensive Inventory Update***

Given that Tulare County Association of Governments (TCAG) has adopted its 2014 Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS), the timing is now appropriate for completion of a comprehensive inventory update and review of the Climate Action Plan. This review will report on progress towards achieving GHG reduction targets. The assumptions, models and methodologies will be transparent and reasonable. Consultant will work with the County to consult with TCAG to determine appropriate assumptions, models and methodologies to update the mobile source inventory. The review will utilize data collected to prepare emission reduction estimates as described below.

Every four years following the TCAG RTP update, the County will conduct a major inventory update. TCAG recently completed the latest RTP that provides up to date VMT data for the County that will allow completion of a comprehensive update to the mobile source Community Inventory. The Comprehensive Update will compile the statistics generated for the Annual Reports to provide the net change in development that occurred over the previous four years and would use updated VMT data generated by TCAG in developing the RTP. The Comprehensive Update will provide a complete picture of the progress achieved over time accounting for actual growth and actual effectiveness of programs and regulations implemented to reduced greenhouse gas emissions. In addition, the Comprehensive Update will provide a solid foundation from which the County can determine whether additional measures are needed to achieve reduction targets.



Consultant will provide a Comprehensive Inventory Update based on the most current year with complete data available to use as a new base year. The appropriate year will be determined at the beginning of the project. In addition, the inventory will include new source categories not included in the original inventory. New energy usage data will be obtained from PG&E and SCE as the basis of the inventory for the most current year and to gauge progress since the original inventory was prepared. VMT will be obtained from TCAG for the latest year available for use in generating the mobile source inventory based on the County's share of population or other metric recommended by TCAG.

Many of the emission modeling tools are likely to be updated after four years and more accurate modeling assumptions will be available at that time. In order to provide an 'apples to apples' comparison, modeling of the baseline year and target years would also need to be conducted with the new modeling tools and assumptions. For example, new versions of EMFAC will include the latest emission factors for motor vehicles that reflect the effectiveness of the controls on vehicles sold in the past and new estimates of the future effectiveness of controls that apply to new vehicles purchased in the future. In addition, updates from State regarding statewide forecasts and regulation effectiveness will be needed to provide an appropriate baseline from which to determine whether the County is doing its share to help meet State targets.

Emissions estimates for motor vehicles will utilize vehicle travel data developed by TCAG for the latest Regional Transportation Plan and compliance with SB 375. Emission factors from EMFAC 2011 will be used unless a new version is approved for use at the time the inventory is developed. Emissions inventories for motor vehicles are compiled by TCAG for the County as a whole and not by jurisdiction within the County. Emissions for the County can be estimated by its share of population. However, FCS will consult with TCAG to determine if adjustments for County areas can be provided by the model based on County traffic analysis zones. Emissions from through traffic would not be counted in the County inventory.

The Comprehensive Update will include the following tasks:

- Update baseline, current year, and forecast inventories using the latest modeling assumptions for population, development, and regulation effectiveness with the latest approved models and emission estimating tools.
- Analyze the changes in emissions provided through implementation of the General Plan Update and CAP measures from the base year through the current year.
- Determine if additional emission reductions are required to achieve CAP targets and AB 32 consistency.
- Prepare Draft Comprehensive Inventory Update Report
- Prepare Final Comprehensive Inventory Update Report

#### ***Task 2: CAP Monitoring and Tracking Protocol and Tools***

Consultant will provide procedures and tools to track progress on CAP implementation. The inventory update described above and the tracking tools will provide the data needed for the County to prepare the Annual Progress Reports for the General Plan Implementation Report.



The scope of work for this task envisions a relatively simple tool that compiles various building statistics that would enable the County to quantify the overall reductions achieved. The most important statistics are the amount of population growth and new construction accomplished during any time period. The future year targets are based primarily on population projections. If population growth is different than projected, more or less emission reductions may be needed to meet the targets. However, reductions in per capita emissions would be somewhat less in a slow growth environment because fewer people will be living in new energy efficient housing and supporting energy efficient businesses. State of California strategies such as Pavley motor vehicle standards and increases in renewable energy use required by the Renewable Portfolio Standard affect both new and existing development and are independent of growth rates in Tulare County.

The protocol and tracking tool will focus on tracking development within the County and County programs that affect new and existing development, but for reporting purposes it will be important to show decision makers and the public if the state measures and CAP strategies are on track in relation to the amount of population growth and development that has actually occurred.

Baseline emissions were provided by TCAG for the original inventory. TCAG updates the regional transportation model to include the latest planning assumptions to comply with federal Clean Air Act conformity requirements. SB 375 has required TCAG to prepare VMT estimates for light duty passenger vehicles and trucks, but not other vehicle types. These planning efforts provide useful information to consider in tracking and monitoring, but do not account for project level changes in VMT. For this reason, the approach will base VMT estimates on changes in density, broad measures of development pattern and walkability, coverage with bicycle facilities, etc. This would be followed up with more complete assessment in the Comprehensive Inventory Updates.

### ***Task 3: Assistance with Annual Progress Reports***

Consultant will assist the County in analyzing data collected with the monitoring and tracking system and from VMT data provided by TCAG for use in Annual Progress Reports. The Annual Progress Reports will include the annual review of the Emissions Inventory and per capita Vehicle Miles Traveled (VMT) within the County's borders as part of its annual General Plan Implementation Report ("Annual Review"). The Annual Review will report on progress towards achieving GHG reduction targets. The Annual Review will utilize development statistics and convert them to emission reduction estimates. The analysis will determine whether emissions are decreasing at the rate required to meet targets or increasing to the point where additional emission reduction measures would be required.

The Annual Progress Report would present the previous year's development statistics by type and quantity of land use projects completed along with the results of the Annual Review that utilizes those statistics and VMT estimates to determine emission reductions. The Annual Progress Report will provide the following information:

- Number of residential units constructed by type (single-family, multifamily, mobilehome, etc.)
- Average development density of the residential projects

- The percentage of residential construction in Community Plan areas and in rural residential areas
- The average percentage Title 24 was exceeded in residential subdivisions
- Amount of non-residential construction by type (commercial and retail projects, industrial and agricultural processing)
- Sustainability features incorporated into non-residential projects beyond regulation (may need to limit to large projects)
- The average percentage Title 24 was exceeded in non-residential projects
- Overall progress from water conservation measures
- Overall progress in achieving solid waste reduction goals
- Overall growth in population compared to amount projected in CAP
- Energy retrofit projects completed (KW of solar installed, efficiency retrofits completed, etc.)
- County energy and water conservation programs implemented and effectiveness of the programs
- Assessment of vehicle miles traveled from new development in the previous year in comparison to forecasted amounts.
- Status of State regulations adopted to reduce greenhouse gas emissions including newly adopted or amended regulations and the State's estimate of the effectiveness of the regulations.

02/04/15



ORDINANCE NO.

AN ORDINANCE ADDING SECTION 7-01-1470 TO ARTICLE 1 OF CHAPTER 1 OF PART VII OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO SOLAR ENERGY REQUIREMENTS FOR RESIDENTIAL SUBDIVISIONS.

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE ORDAINS AS FOLLOWS:

Section 1. Section 7-01-1470 is hereby added to Article 1 of Chapter 1 of Part VII of the Ordinance Code of Tulare County to read:

SECTION 7-01-1470. SOLAR ENERGY REQUIREMENTS FOR RESIDENTIAL SUBDIVISIONS:

(a) PURPOSE: Due to the increasing costs of energy for single-family residences and the public benefit in developing alternative energy sources, the County desires to promote the public welfare by insuring that single families have access to residences using renewable energy resources. In addition, use of renewable energy sources as solar energy may assist in the reduction of greenhouse gas emission and can be considered for that purpose in any residential housing project review.

(b) REQUIREMENTS: Solar photovoltaic systems (commonly known as solar panels) or alternative energy systems shall be installed on a specific percentage of single-family residences in each new residential development proposed through a subdivision map application requiring County discretionary approval. A "single-family residence" means a "dwelling, one family" as defined in the Tulare County Ordinance Code. The solar photovoltaic system or alternative energy system shall have a generation capacity to be determined on a project by project basis, but not less than 1.5kW (kilowatts) per dwelling. The kW value shall be based upon the manufacturer's nameplate rating for the photovoltaic system/alternative energy system or other comparable measurement system as determined by the County. This requirement shall be imposed as a condition of approval by the final County decision-maker on the subdivision map application subject to this Chapter. If a map or tract is built in phases, this requirement shall be fulfilled for each phase. These systems or facilities shall comply with all other, relevant County regulations, including but not limited to any height or visibility restrictions unless exempted by state law. This requirement will be imposed according to the following sliding scale:

1) Of fifty (50) units to one hundred forty nine (149) units, ten percent (10%) shall have solar photovoltaic or alternative energy systems.

2) Of one hundred fifty (150) units to four hundred ninety nine (499) units, twenty percent (20%) shall have solar photovoltaic or alternative energy systems.

3) Of five hundred (500) units or more, twenty-five percent (25%) shall have solar photovoltaic or alternative energy systems.

(c) ALTERNATIVE ENERGY SYSTEMS: The Planning Commission or Board of Supervisors, whichever is the final decision-making body considering the subdivision map application, may allow the use of alternative energy systems in place of the "solar photovoltaic



systems" requirement contained in subsection (b), as a condition of map approval. Provided, however, that the County finds that the energy savings from such alternative energy systems will equal or exceed all the other requirements for solar photovoltaic systems contained in subsection (b). Alternative energy systems include, wind, geothermal, hydroelectric, biomethane, solar (including solar hot water heaters and solar thermal electric) or as otherwise defined as a renewable energy resource by the California Public Utilities Commission or the California Energy Commission. Such alternative systems shall comply with all other, relevant County regulations, including but not limited to any height or visibility restrictions unless exempted by state law.

(d) EXEMPTIONS: This section shall not apply to parcel map applications or subdivision map applications proposing for any of the following types of development:

A) Less than 50 units,

B) Multiple Family Dwellings, the design of which, do not support individual unit solar systems,

C) Affordable housing projects for low and very low income households as identified by the Tulare County Housing Element.

(e) CENTRALIZED SOLAR AND ALTERNATIVE ENERGY SYSTEMS: Rather than installing solar photovoltaic systems or alternative energy systems on each individual single-family residence, as provided by subsection (b), an applicant may elect to construct all or part of the solar energy facilities in a centralized location. Provided, however, that the centralized solar energy facilities or other centralized alternative energy systems will equal or exceed all the other requirements for solar photovoltaic systems contained in subsection (b). Subject to approval by the County, the map application would also have to provide for the perpetual operation and maintenance of the system for the life of the subdivision, and ensure that no cost is incurred by the County. These requirements shall be imposed as a condition of approval by the final County decision-maker on the Subdivision application subject to this Chapter. An applicant may not utilize a centralized solar or alternative energy system which has been utilized as a mitigation measure for a separate unrelated project or as part of California's Renewable Portfolio standard to fulfill the requirements of this section. If a map or tract is built in phases, the solar energy system requirement shall be fulfilled prior to the sale of any lots in that phase. These systems or facilities shall comply with all other, relevant County regulations, including but not limited to any height or visibility restrictions unless exempted by state law.

(f) EXCEPTIONS: PRACTICAL DIFFICULTIES: The Planning Commission or Board of Supervisors, whichever is the final decision-making body considering the subdivision map application, may exempt development from this section upon finding that application of this section would be infeasible as that term is defined under the California Environmental Quality Act or a finding that application of this section would contravene state or federal law.

Section 2. Section 7-01-1470 will apply to all subdivision map act applications filed after its effective date and all pending subdivision map applications in the pre-hearing stage within pending or approved Planned Community Area designation requests.

Section 3. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof, and prior to the expiration of fifteen (15) days from the passage hereof [a summary] shall be published once in the \_\_\_\_\_, a newspaper printed and published in the County of Tulare, State of California, together with the names of the Board of Supervisors voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at a regular meeting of said Board duly and regularly convened on said day by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

COUNTY OF TULARE

By: \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU  
County Administrative Officer/  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

JJR/20141415/703188/02-04-15





ORDINANCE NO.

AN ORDINANCE ADDING CHAPTER 4 TO PART III OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO LIMITATIONS ON DIESEL-FUELED COMMERCIAL MOTOR VEHICLE ENGINE IDLING.

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE ORDAINS AS FOLLOWS:

Section 1. Chapter 4, consisting of Sections \_\_\_\_\_, is hereby added to PART III of the Ordinance Code of Tulare County to read as follows:

CHAPTER 4: LIMITATION ON DIESEL-FUELED COMMERCIAL MOTOR VEHICLE  
ENGINE IDLING

ARTICLE 1. GENERAL PROVISIONS

SECTION 3-04-1000 PURPOSE:

The State Legislature of the State of California has determined that air quality is impacted by lengthy idling of diesel-fueled commercial motor vehicles. It authorized the California Air Resource Board, pursuant to Health and Safety Code sections 39002, 39003, 39500 and 43013, to adopt regulations restricting idling of diesel-fueled commercial motor vehicles. The California Air Resources Board adopted Section 2485 as set forth in Title 13 for the California Code of Regulations restricting the idling of diesel-fueled commercial motor vehicles with gross vehicle weight ratings of greater than 10,000 pounds that are or must be licensed to operate on publicly maintained highways and streets within California. The County of Tulare desires to raise public awareness of these restrictions and the associated penalties by adding this Chapter, incorporating these regulations, to the Ordinance Code of Tulare. References to Section 2485 of Title 13 of the California Code of Regulations will hereinafter be noted as authority for particular sections of this Chapter as follows: [Reference: 13 CCR Section 2485].

SECTION 3-04-1005: INTENT:

It is the County's intent to incorporate the regulations of Title 13, Section 2485, of the California Code of Regulations into its Ordinance Code to provide a local reference to these requirements. The authority to adopt these regulations is vested in the California Air Resources Board. It is not the intent of the County to replace, supersede or modify the regulations adopted by the California Air Resource Board. It is the County's intent that regulations adopted by the California Air Resource Board pertaining to diesel-fueled commercial motor vehicles and any amendments or changes made from time to time to those regulations shall control, take priority over and pre-empt the regulations adopted below.

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## SECTION 3-04-1010 APPLICABILITY:

This Chapter applies to diesel-fueled commercial motor vehicles that operate in the unincorporated areas of the County of Tulare with gross vehicle weight ratings of greater than 10,000 pounds that are or must be licensed for operation on highways as provided in Title 13, Section 2485 of the California Code of Regulations. This specifically includes (1) California-based vehicles and (2) Non-California-based vehicles. [Reference: 13 CCR Section 2485(b)]

## SECTION 3-04-1010 DEFINITIONS:

The definitions set out in Title 13, Section 2485(h), of the California Code of Regulations and the California Vehicle Code, as either may be amended from time to time, shall govern the construction of this Chapter and control over the definitions set out herein. The definitions set out herein are for ease of reference only and shall not supersede, preempt or modify the definitions set out in Section 2485(h) or the Vehicle Code.

(a) "Armored car" is as defined in Vehicle Code section 115 (a vehicle that is equipped with materials on either the front, sides, or rear for the protection of persons therein from missiles discharged from firearms).

(b) "Authorized emergency vehicle" is as defined in Vehicle Code Section 165.

(c) "Auxiliary power system" or "APS" means any device that is permanently dedicated to the vehicle on which it is installed and provides electrical, mechanical, or thermal energy to the primary diesel engine, truck cab and/or sleeper berth, bus's passenger compartment or any other commercial vehicle's cab, as an alternative to idling the primary diesel engine.

(d) "Bus" means any vehicle defined in Title 13, California Code of Regulations, Section 2480, subsections (h) (13)-(16), inclusive or as defined in the Vehicle Code Section 233.

(e) "Commercial motor vehicle" means any vehicle or combination of vehicles defined in Vehicle Code Section 15210(b) and any other motor truck or bus with a gross vehicle weight rating of 10,001 pounds or more, except the following:

(1) a zero emission vehicle; or

(2) a pickup truck as defined in Vehicle Code Section 471 (a motor truck with a manufacturer's gross vehicle weight rating of less than 11,500 pounds, an unladen weight of less than 8,001 pounds, and which is equipped with an open box-type bed not exceeding 9 feet in length. "Pickup truck" does not include a motor vehicle otherwise meeting this definition that is equipped with a bed-mounted storage compartment unit commonly called a "utility body").

(f) "Driver" is as defined in Vehicle Code Section 305 (any person who drives, operates, or is in actual physical control of a vehicle).

(g) "Fuel-fired heater" means a fuel burning device that creates heat for the purpose of (1) warming the cab or sleeper berth compartment of a vehicle or (2) warming the engine oil and/or

coolant for easy start-up of the vehicle's engine but does not contribute to the propulsion of the vehicle.

(h) "Gross vehicle weight rating" is as defined in Vehicle Code Section 350 (the weight specified by the manufacturer as the loaded weight of a single vehicle).

(i) "Highway" is as defined in Vehicle Code Section 360 (a way or place of whatever nature, publicly maintained and open to the use of the public for purposed of vehicular travel. Highway includes street.)

(j) "Idling" means the vehicle engine is running at any location while the vehicle is stationary.

(k) "Motor truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(l) "Official traffic control device" is as defined in Vehicle Code Section 440 (any signal, marking, or device, consistent with Section 21400 of the Vehicle Code, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic, but does not include islands, curbs, traffic barriers, speed bumps, or other roadway design features).

(m) "Official traffic control signal" is as defined in Vehicle Code Section 445 (any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and proceed and which is erected by authority of a public body or official having jurisdiction).

(o) "Owner" is as defined in Vehicle Code Section 460.

(p) "Primary diesel engine" means the diesel-fueled engine used for vehicle propulsion.

(q) "Queuing" means (1) through (3):

(1) the intermittent starting and stopping of a vehicle;

(2) while the driver, in the normal course of doing business, is waiting to perform work or a service; and

(3) when shutting the vehicle engine off would impede the progress of the queue and is not practicable.

(4) Queuing does not include the time a driver may wait motionless in line in anticipation of the start of a workday or opening of a location where work or a service will be performed.

(r) "Restricted area" means any real property zoned for individual or multifamily housing units that has one or more of such units on it.

- (s) "Safety or health emergency" means:
  - (1) a sudden, urgent, or usually unforeseen, occurrence; or
  - (2) a foreseeable occurrence relative to a medical or physiological condition.
- (t) "Sleeper berth" is as defined in Title 13, California Code of Regulations, Section 1265.
- (u) "Vehicle" is as defined in the Vehicle Code Section 670 (a device by which any person or property may be propelled, moved or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks).
- (v) "Workover rig" is as defined in Section 2449 of Title 13, California Code of Regulations (a mobile self-propelled rig used to perform one or more remedial operations, such as deepening, plugging back, pulling and resetting liners, on a producing oil or gas well to try to restore or increase the well's production).

### ARTICLE 3: RESTRICTIONS

#### SECTION 3-04-1020 IDLING RESTRICTIONS:

As provided in Title 13 of the California Code of Regulations, Section 2485(c):

(a) Idling: The driver of any vehicle subject to Title 13 of the California Code of Regulations, Section 2485 and this Chapter shall comply with the following requirements, except as noted in Section 3-04-1030 below:

(1) The driver shall not idle the vehicle's primary diesel engine for greater than 5.0 minutes at any location.

(2) The driver shall not operate a diesel-fueled auxiliary power system (APS) to power a heater, air conditioner, or any ancillary equipment on that vehicle during sleeping or resting in a sleeper berth for greater than 5.0 minutes at any location when within 100 feet of a restricted area.

(b) Use of Alternative Technologies:

(1) The driver shall not operate an internal combustion APS on any vehicle equipped with a 2007 and subsequent model year primary diesel engine unless the vehicle is:

(A) Equipped with an APS meeting the emissions performance requirements found in subsection (a), below; and

(B) The vehicle is equipped with a label meeting the requirements pursuant to section 35.B.4 of the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles," as incorporated by reference in Title 13, California Code of Regulations, Section 1956.8(b).

(2) The driver shall not operate a fuel-fired heater on any vehicle equipped with a 2007 and subsequent model year primary diesel engine unless the fuel-fired heater meets the emissions performance requirements found in subsection (c)(2), below;

(3) The driver of a vehicle equipped with a 2006 or older model year primary diesel engine may use and operate in California any certified internal combustion APS with or without the additional PM control specified in subsection (c)(1)(A) or any other certified alternative idling reduction technology.

(c) Compliance Requirements: As an alternative to idling the primary engine, diesel engines/vehicles may, as an option, be equipped with alternative technologies, as listed and defined below in (1), (2), and (3) of this subsection. If so equipped, these technologies are subject to the following requirements:

(1) Internal Combustion APS.

(A) In order to operate in California, an APS utilizing an internal combustion engine must comply with applicable California off-road and/or federal non-road emission standards and test procedures for its fuel type and power category. In addition, diesel-fueled APSs installed on vehicles equipped with primary engines certified to the 2007 and subsequent model year heavy-duty diesel engine standards, pursuant to Section 1956.8(a)(2)(A) of Title 13 of the California Code of Regulations, shall either,

- i. be equipped with a verified Level 3 in-use strategy for particulate matter control (see title 13, CCR, sections 2700 to 2710), or
- ii. have its exhaust routed directly into the vehicle's exhaust pipe, upstream of the diesel particulate matter after treatment device.

(B) With advance approval of the Executive Officer of the California Air Resource Board, a certifying/verifying APS manufacturer may petition for an alternate compliance strategy other than described in (1)(A)(i) or (ii) in this subsection above. However, this provision is limited to manufacturers that can demonstrate, to the satisfaction of the Executive Officer of the California Air Resources Board, that their alternative strategy is equivalent (or "cleaner"), from an emissions standpoint, compared to the requirement described in (1)(A)(i) or (ii) in this subsection above. As an example, strategies that can use the available electric power infrastructure, instead of solely operating a diesel-fueled APS for engine and/or cab heating and cooling, may be able to use such alternate strategy to demonstrate compliance with these requirements.

(2) Fuel-Fired Heaters. Fuel-fired heaters must comply with the applicable California emission standards and test procedures as specified in the Low Emission Vehicle program requirements found in Title 13, California Code of Regulations, subsections 1961(a)(15) and (d), or in Part I.E.1.13 of the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," as incorporated by reference in Title 13, California Code of Regulations, section 1961(d). However, the specified requirement that limits fuel-fired heaters from being operated above 40 degrees F does not apply.

(3) Other Idle Reduction Technologies. Other technologies that will reduce idling emissions may also be used, including the use of batteries, fuel cells, power inverter/chargers for on-shore electrical power, on-shore electric power infrastructure also known as truck stop electrification, and other technologies that produce minimal or no emissions. With the exception of battery and fuel cell powered APSs, power inverter/chargers, and electric power infrastructure, the use of other technologies are subject to advance Executive Officer approval and must be at least as effective in reducing idling emissions as the technologies described in subsections (c)(1), above, or the NOx idling emission standard specified in Title 13, California Code of Regulations, section 1956.8(a)(6)(C). The Executive Officer shall use good engineering judgment and test data to determine if an idle reduction technology provides idling emission controls equivalent to the standards specified in subsection (c)(A) above, or in Title 13, Section 1956.8(a)(6)(C) of the California Code of Regulations.

(4) Labeling Requirements. 2007 and subsequent model year commercial diesel vehicles equipped with an internal combustion APS meeting the requirements specified in subsection (c)(1) shall have a label affixed to the hood of the vehicle to allow operation of the APS in California. The labels shall meet the requirements specified in section 35.B.4 of the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles," as incorporated by reference in Title 13, Section 1956.8(b) of the California Code of Regulations.

#### SECTION 3-04-1030. EXCEPTIONS:

(a) Except when a vehicle is located within 100 feet of a restricted area, subsection (a)(1) of Section 3-04-1020 does not apply, if the vehicle is equipped with:

(1) a primary diesel engine meeting the optional NOx idling emission standard pursuant to Title 13, California Code of Regulations, section 1956.8(a)(6)(C); and

(2) a label meeting the requirements pursuant to section 35.B.4 of the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles," as incorporated by reference in Title 13, California Code of Regulations, section 1956.8(b).

(b) Subsection (a)(1) of Section 3-04-1020 does not apply for the period or periods during which

(1) a bus is idling for

(A) up to 10.0 minutes prior to passenger boarding, or

(B) when passengers are onboard;

(2) [Reserved]

(3) idling when the vehicle must remain motionless due to traffic conditions, an official traffic control device, or an official traffic control signal over which the driver has no control, or at the direction of a peace officer, or operating a diesel-fueled APS or other device at the direction of a peace officer;



(4) idling when the vehicle is queuing that at all times is beyond 100 feet from any restricted area;

(5) idling of the primary diesel engine, operating a diesel-fueled APS, or operating other devices when forced to remain motionless due to immediate adverse weather conditions affecting the safe operation of the vehicle or due to mechanical difficulties over which the driver has no control;

(6) idling to verify that the vehicle is in safe operating condition as required by law and that all equipment is in good working order, either as part of a daily vehicle inspection or as otherwise needed, provided that such engine idling is mandatory for such verification;

(7) idling of the primary diesel engine, operating a diesel-fueled APS, or operating other devices is mandatory for testing, servicing, repairing, or diagnostic purposes, including regeneration or maintenance of the exhaust emission control device during engine idling when the dashboard indicator light, if so equipped, is illuminated indicating that regeneration or maintenance is in progress;

(8) idling when positioning or providing a power source for equipment or operations, other than transporting passengers or propulsion, which involve a power take off or equivalent mechanism and is powered by the primary engine for:

(A) controlling cargo temperature, operating a lift, crane, pump, drill, hoist, mixer (such as a ready mix concrete truck), or other auxiliary equipment;

(B) providing mechanical extension to perform work functions for which the vehicle was designed and where substitute alternate means to idling are not reasonably available; or

(C) collection of solid waste or recyclable material by an entity authorized by contract, license, or permit by a school or local government;

(9) idling of the primary diesel engine, operating a diesel-fueled APS, or operating other devices when operating defrosters, heaters, air conditioners, or other equipment solely to prevent a safety or health emergency;

(10) idling of the primary diesel engine, operating a diesel-fueled APS, or operating other devices by authorized emergency vehicles while in the course of providing services for which the vehicle is designed;

(11) idling of military tactical vehicles during periods of training, testing, and deployment;

(12) idling when operating equipment such as a wheelchair or people assist lift as prescribed by the Americans with Disabilities Act;

(13) idling of armored cars in the course of providing services for which the vehicle is designed; and

(14) idling of workover rigs while performing work for which the vehicle is designed.

SECTION 3-04-1035: RELATIONSHIP TO OTHER LAW.

Nothing in this Chapter allows idling in violation of other applicable law, including, but not limited to:

- (1) California Vehicle Code Section 22515;
- (2) Title 13, Section 2480, California Code of Regulations;
- (3) California Health and Safety Code Section 40720; or
- (4) any applicable ordinance, rule, or requirement as stringent as, or more stringent than, this section.

ARTICLE 5: ENFORCEMENT AND PENALTIES

SECTION 3-04-1040: ENFORCEMENT.

This Chapter may be enforced by the Air Resources Board; peace officers as defined in California Penal Code, title 3, chapter 4.5, Sections 830 et seq. and their respective law enforcement agencies' authorized representatives; and the San Joaquin Valley Air Pollution Control District; and the County.

SECTION 3-04-1045: PENALTIES.

For violations of Section 2485 of Title 13 of the California Code of Regulations, the driver of a subject vehicle is subject to a minimum civil penalty of 300 dollars and to criminal penalties as specified in the Health and Safety Code and the Vehicle Code. In addition, for violation of any provision in this Chapter, the driver of the subject vehicle shall be guilty of an infraction and shall be punishable as provided in Section 125 of this Ordinance Code.

Section 2. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof, and prior to the expiration of fifteen (15) days from the passage hereof a summary shall be published once in the \_\_\_\_\_, a newspaper printed and

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published in the County of Tulare, State of California, together with the names of the Board of Supervisors voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at a regular meeting of said Board duly and regularly convened on said day by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

COUNTY OF TULARE

By: \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU  
County Administrative Officer/  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk





**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

In the Matter of Establishing a Process for	)	R E S O L U T I O N
Use in the Review of Development	)	NO.
Projects Requiring County of Tulare Discretionary	)	
Land Use Entitlements to Identify any Impacts	)	
On Potential Groundwater Recharge Areas	)	

WHEREAS, the County of Tulare is located in the Tulare Groundwater Basin as described in the California Department of Water Resources (DWR), Bulletin No. 118; and

WHEREAS, according to DWR Bulletin No. 118, the Tulare Ground Water Basin is in a condition of significant overdraft; and

WHEREAS, the areas with the potential for effective groundwater recharge are limited by, at least, the permeability of soil type and the availability of surface waters, and

WHEREAS, certain special districts, under California Law, are empowered or charged with the responsibility to plan for and engage in groundwater recharge efforts; and

WHEREAS, groundwater recharge efforts are generally of benefit to the residents of Tulare County; and

WHEREAS, certain types of development may result in the construction and maintenance of impervious surfaces to the extent that such surfaces may impact the ability of any particular site or parcel to be used for groundwater recharge; and

WHEREAS, the County desires to consider this factor in evaluation of development applications for County discretionary land use entitlements; WHEREAS, the special districts engaged in or most familiar with potential groundwater recharge areas in Tulare County are the Tulare County Resource Conservation District and the Irrigation Districts located in Tulare County; and

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WHEREAS, a substantial increase in impervious surface area may potentially impact water flow.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. In reviewing any development application for County of Tulare discretionary land use entitlements fitting the criteria described in paragraph No. 3, the Tulare County Resource Management Agency shall include the following steps in the County's process:

a) Send a letter of notice to the Tulare County Resource Conservation District and the irrigation district within whose boundaries the proposed project is located, advising the District of the proposed project, specifically asking the District to provide any information it may have regarding any impact the proposed project may have on potential groundwater recharge areas and requesting a response within a specified period time of no less than ten (10) calendar days. This request will be made at least ten (10) calendar days before preparation of a final staff report or presentation.

b) Include in any final staff report or other final presentation to the decision-making body reviewing the project application mention of the consultation and any information provided.

c) Address any information provided by the consulted Districts in any findings supporting the County decision-making body's decision on the proposed project.

2. If the proposed development project requires more than one application for a County discretionary land use entitlement, the process set out in paragraph No. 1 and its subparts, need only be followed in review of the first application where the project description indicates the use of impervious surfaces. However, if there is a project description change that will result in an increase in impervious surface areas on the site, the process will be repeated with that information.

3. The process set in paragraph No. 1 and its subparts and paragraph No. 2 shall only apply to applications for new development projects proposed on ten (10) acres or more. This process shall not be required for projects which provide on-site storm-water capture systems which are capable

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of capturing fifty percent (50%) or more of three quarter (3/4) inches of rainfall for the project site in a twenty-four (24) hour period.

The foregoing resolution was adopted on motion of Supervisor \_\_\_\_\_,  
seconded by Supervisor \_\_\_\_\_, at a regular meeting of this Board of  
Supervisors held on \_\_\_\_\_, 20 \_\_, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

ATTEST: JEAN ROUSSEAU, COUNTY ADMINISTRATIVE OFFICER/  
CLERK BOARD OF SUPERVISORS

By: \_\_\_\_\_

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JJR/2014936/702255  
02-04-15





**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

In the Matter of Establishing a Policy	)	RESOLUTION
For Use in the Review of Development	)	NO.
Projects to be Located in particular flood prone	)	
Areas and Requiring County of Tulare	)	
Discretionary Land Use Entitlements	)	

WHEREAS, certain flood prone areas have been mapped in the County of Tulare over the years by the U.S. Corp of Army Engineers for the Federal Emergency Management Agency (FEMA) and by the California Department of Water Resources (DWR); and

WHEREAS, dam failure inundation maps prepared pursuant to Government Code section 8589.5 are available from the California Office of Emergency Services; and

WHEREAS, Government Code section 65302, subparts (d)(3) and (g)(2), require cities and counties to identify information regarding flood hazards within their respective jurisdictions; and

WHEREAS, additional, site specific information regarding flood hazards would be pertinent in evaluating development proposed for flood prone areas in order to determine the impact such development may have on the danger of flooding to the public and to property in surrounding areas as well as the danger to the project site;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. It shall be a policy of the County of Tulare to require development projects needing County discretionary land use entitlements to provide additional site specific information on base flood elevations to be considered during the discretionary use entitlement review process. The information shall include flood baseline information for the site and include, but be in addition, to the information and analysis required for the County's Flood Damage Prevention review, codified in Part VII, Chapter 27, of the Ordinance Code of Tulare, and previously required only at the building permit stage. If the information is not available from existing sources, the costs of any surveys or engineering work required shall be borne by the applicant.

2. Any additional site specific information provided by applicants through this process will be incorporated into the process already established by Section 7-27-1180 of the Ordinance Code of Tulare County.

3. This policy shall only apply to those site specific development projects requiring County of Tulare discretionary land use entitlements to build and operate that are proposed to be located within a FEMA 100-year flood zone, a FEMA 500-year flood zone, a Dam Failure inundation Zone, or within a flood prone or risk area located on the DWR Awareness Flood Plan Maps. This policy shall not apply to any legislative enactments such as area General Plan Amendments, Specific Plan Amendments, community plan, zoning amendments or other regulatory document amendments except where combined with adjudicatory permits for private development projects.

The foregoing resolution was adopted on motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, at a regular meeting of this Board of Supervisors held on \_\_\_\_\_, 200\_\_, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

ATTEST: JEAN ROUSSEAU, COUNTY ADMINISTRATIVE OFFICER/  
CLERK BOARD OF SUPERVISORS

By: \_\_\_\_\_

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JJR/2014935/702633  
02-04-2015

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**Attachment F**



**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

In the Matter of a Recommendation to the	)	R E S O L U T I O N
Tulare County Flood Control Commission	)	NO.
Regarding Adoption of a Public Notice Policy to	)	
Allow Increased Public Participation in its Process	)	
To Select Proposed Flood Control Projects	)	
For Referral to the Board of Supervisors	)	

WHEREAS, the Tulare County Flood Control District was established and is governed by the provisions of Water Code Appendix 111-1 and following; and

WHEREAS, the Tulare County Board of Supervisors is the governing board of the Tulare County Flood Control District; and

WHEREAS, California Water Code Appendix 111-7 established the Tulare County Flood Control Commission as an advisory board to the Board of Supervisors on District projects; and

WHEREAS, from time to time, the Tulare County Flood Control Commission considers proposed flood control projects within the jurisdiction of the District and recommends that the Board of Supervisors authorize, revenues permitting, the District to construct and operate those recommended projects selected by the Board; and

WHEREAS, the Board of Supervisors believes that an enhanced transparency in the Tulare County Flood Control Commission's process to review proposed flood control projects for recommendation to the Board would be beneficial to the public and the District;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Board of Supervisors recommends that the Tulare County Flood Control Commission consider adopting as a policy a process such as the following which would provide for public notice of its review of proposed flood control projects that exceeds the notice requirements of the Ralph M. Brown Act:

a) That the Commission develop a "suggestion" form that can be used by members of the public to suggest possible flood control projects for consideration by the Commission,

contingent upon adequate funding. The "suggestion" form may request that the proponent provide information regarding the elements that the Commission ordinarily considers when ranking proposed projects for submission to the Board.

b) That the Commission set an annual deadline for submittal of the "suggestion" forms in order for the proposed flood control projects to be considered by the Commission that year. While the Commission may direct its staff to accept "suggestion" forms on an on-going and keep such forms on file for consideration until the time the Commission reviews proposed projects, the Commission may provide that "suggestion" forms submitted after the annual deadline will not be considered until the following year.

c) That the Commission direct staff to publish an invitation to submit "suggestion" forms in a newspaper of general circulation and post the same on its webpage at least 60 days before the annual submittal deadline.

d) That the Commission direct staff to compile a list of submittal proposals along with staff's own proposals and to publish and post on its webpage notice of, and accept written comments from the public, during a public comment period on the compiled list. The notice need not include the list but should explain how a copy can be obtained. The list should be posted on the Commission's webpage. This "comment" period should be open for 20 days.

e) That the Commission direct staff to prepare responses to the received comments and to submit these comments and responses to the Commission with the compiled list of proposed flood control projects in the form of a staff report at least ten (10) days before the public meeting at which the Commission is scheduled to consider the proposals

f) That the Commission identify a particular, annual meeting date, such as the Fourth Friday in a particular month when it will hold a public meeting to review flood control project proposals, contingent upon funding, for referral to the Board of Supervisors for consideration and direct staff to annually publish notice of that meeting with an invitation to the public to comment on the list of proposed projects in a newspaper of general circulation and post the same on its webpage at least ten (10) days before the meeting. This consideration of proposed projects may be continued from

meeting to meeting until the Commission has had an opportunity to review all of the suggestions submitted by the annual deadline.

2. The Board directs the Clerk of the Board to forward a copy of this recommendation to the Tulare County Flood Control Commission for consideration at its next regular meeting at least 4 weeks after this action.

The foregoing resolution was adopted on motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, at a regular meeting of this Board of Supervisors held on \_\_\_\_\_, 200\_\_\_\_, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

ATTEST: JEAN ROUSSEAU, COUNTY ADMINISTRATIVE OFFICER/  
CLERK BOARD OF SUPERVISORS

By: \_\_\_\_\_

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JJR/2014935/702435  
02-04 -15

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NOW, THEREFORE, BE IT RESOLVED as follows:

1. **INTENT:** After considering project description and design, if any private project requiring County discretionary land use entitlements is found to have any significant impact under the California Environmental Quality Act (CEQA) due to the conversion of five acres or more of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use, it is the intent of the County to provide at least one option or alternative for use to reduce or mitigate such impact. This option or alternative is the provision of an agricultural conservation easements pursuant to an ACEP. This option or alternative is not exclusive and shall be available in addition to any other options, alternatives or mitigation measures feasible for this purpose. This option or alternative is also not mutually exclusively but may be used together with any other option in any combination that effectively reduces or mitigates the identified significant impact. This option or alternative may also be considered or used for credit toward or used to meet any project-required, greenhouse gas emission reductions.

2. **TYPES OF MITIGATION:** Any significant impact found under CEQA due to conversion of defined agricultural lands to non-agricultural use may be reduced or mitigated by granting farmland conservation easements or other farmland conservation mechanisms as set out in this resolution to or for the benefit of a Qualifying Entity.

3. **AGRICULTURAL CONSERVATION EASEMENT PROGRAM (ACEP):** This resolution establishes an ACEP to allow the use of agricultural conservations easements to reduce or mitigate any significant impacts found under the CEQA due to conversion of certain agricultural lands to non-agricultural uses. The first step in creating this Program will be to establish the criteria for agricultural conservation easements that may be used to reduce or mitigate any potential significant impact found under the CEQA due to the conversion of five or more acres of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use.

4. **CRITERIA FOR AN EASEMENT:** A "Farmland conservation easement" means, for the purposes of this ACEP, an easement over agricultural land for the purpose of restricting its use for the term set forth in this resolution for primarily agricultural and agricultural-compatible uses. Any easement offered or used under this program shall, at a minimum, meet these criteria:

A) Preferably the easement will be located in the San Joaquin Valley but other suitable lands may be encumbered subject to approval by the Board of Supervisors.

B) The easement will include Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency.

C) The land placed under the easement must be of substantially the same quality, have or could acquire access to water, and could otherwise be feasibly cultivated.

D) The land placed under the easement must be at a minimum of a one to one (1:1) ratio or its functional equivalent to the loss of defined agricultural lands mitigated.



5. **PROVISION OF EASEMENT:** The provision of an agricultural conservation easement pursuant Paragraph 4 is subject to these provisions:

A) The applicant shall pay directly to the Qualifying Entity, as described in Section 7. below, a reasonable administrative fee equal to cover the costs of administering, monitoring and enforcing the farmland conservation easement or other instrument in an amount determined by the decision making body approving the discretionary land use entitlements. The County shall require the payment of an additional fee to cover the cost of its own monitoring of the administration of the conservation easement by the Qualifying Entity described below.

B) The farmland conservation easement or other preservation instruments shall be held by a Qualifying Entity, the choice of which shall be approved by the County decision-making body. The County shall be a co-holder or backup beneficiary of the legal instrument. If the Qualifying Entity refuses to hold the easement or other preservation instrument, it shall be held by the County until a suitable Qualifying Entity is identified and agrees to undertake the duties and responsibilities for such easement established herein.

## 6. **LEGAL INSTRUMENTS: REQUIREMENTS**

A) **Requirements:** The legal instrument creating an agricultural conservation easement or otherwise encumbering property for conservation purposes shall meet the following requirements:

- a) It shall be executed by all owners of the agricultural mitigation land.
- b) It shall be in form suitable for recordation.
- c) It shall contain an accurate legal description setting forth the description of the agricultural mitigation land.
- d) It shall prohibit any activity that substantially impairs or diminishes the agricultural productivity of the land. However, all activities or land uses currently allowed under the County's Agriculture zoning designations will be allowed on mitigation land.
- e) It shall prohibit new residential (other than the single family dwellings allowed by right and by permit in the applicable agricultural zone) and/or commercial development on agricultural mitigation land that is not directly needed for agricultural production, regardless of existing zoning.
- f) It shall protect the existing water rights and retain them with the agricultural mitigation land.

B) **County Interests:** The County shall be named a co-holder or backup beneficiary under any instrument conveying the interest in the agricultural mitigation land to a Qualifying Entity.

C) **Disposition of Land:** Interests in agricultural mitigation land shall be held in trust by a Qualifying Entity and/or by the County in perpetuity. Except as provided in Subsection (d) of this Paragraph, the Qualifying Entity or the County shall not sell, lease, or convey any interest in



agricultural mitigation land it acquires. The legal instrument encumbering the agricultural mitigation land shall include the provisions of this Subsection.

D) **Change in Circumstances:** If the Board of Supervisors find that the purpose described in this resolution can no longer reasonably be fulfilled as to an interest acquired, the Qualifying Entity's interest in the land held for conservation, as secured by the legal instrument, may be extinguished through sale, and the proceeds shall be used to acquire interests in other suitable land in Tulare County, subject to approval by the Board of Supervisors.

## 7. QUALIFYING ENTITY:

A) **Definition:** For the purposes of the ACEP, "Qualifying Entity" means a nonprofit public benefit 501(c)(3) corporation or other appropriate legal entity operating in Tulare County for the purpose of conserving and protecting land in agriculture, and approved for this purpose by the Board of Supervisors. The County or a City within the County may be designated as a Qualifying Entity.

B) **Duties and Responsibilities:** The Qualifying Entity shall be responsible for, without exception, acquiring or holding interests in land and administering, monitoring and enforcing the farmland conservation easement or other instrument designed to preserve the agricultural values of the land for farmland conservation purposes. The location and characteristics of the agricultural land obtained or held for farmland conservation purposes shall meet the provisions of Paragraph 4. The agricultural land held for farmland conservation purposes may be used for those types of agricultural related activity allowed in the agricultural easement or related legal document. If any Qualifying Entity owning an interest in agricultural lands held for conservation ceases to exist, the duty to hold, administer, monitor and enforce the interest shall pass to the co-holder or backup beneficiary of the legal instrument. The County, acting as co-holder or backup beneficiary, may designate another Qualifying Entity to assume the responsibilities to hold, administer, monitor and enforce the interest.

## 8. MONITORING, ENFORCING, AND REPORTING:

A) **Monitoring and Enforcing:** The Qualifying Entity shall monitor all lands and easements acquired under the ACEP as described in this resolution and shall review and monitor the implementation of all management and maintenance plans for these lands and easement areas. It shall also enforce compliance with the terms of the conservation easements or other agricultural mitigation instruments.

B) **Reporting by Qualifying Entity:** Annually, beginning one year after first accepting responsibility for an agricultural conservation easement under the ACEP or first accepting payment of in-lieu fee, the Qualifying Entity shall provide to the Tulare County Resource Management Agency with reports delineating the activities undertaken pursuant to the requirements of this ACEP and an assessment of these activities. The report(s) shall describe the status of all lands and easements acquired under this ACEP, including a summary of all enforcement actions.

C) **Reporting by the Tulare County Resource Management Agency:** Annually, the Tulare County Resource Management Agency shall review the reports submitted to it by the Qualifying Entity as well as any other relevant material. It shall prepare an Annual Report that provides an independent assessment of the effectiveness of the ACEP relative to its purpose. The Report shall document the funds collected and map the lands put under conservation easement pursuant to the provisions of this resolution. It shall also document the size and location of the land

that is to be converted to a nonagricultural use, which generated the mitigation requirements of this Chapter. The Agency shall present the Report, along with other relevant material received, to the Board of Supervisors at a regular meeting of the Board. Ten days prior to the Board meeting, the Agency shall publish notice in a newspaper of general circulation and post on its webpage the date that the Board will consider the report along with an invitation to the public to submit comments on the report prior to and during the Board's open session consideration of the report.

The foregoing resolution was adopted on motion of Supervisor \_\_\_\_\_,  
seconded by Supervisor \_\_\_\_\_, at a regular meeting of this Board of  
Supervisors held on \_\_\_\_\_, 200\_\_, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

ATTEST: JEAN ROUSSEAU, COUNTY ADMINISTRATIVE OFFICER/  
CLERK BOARD OF SUPERVISORS

By: \_\_\_\_\_

\*\*\*\*\*

JJR/2014444/708249  
02-04-15





**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

In the Matter of Establishing a Policy	)	RESOLUTION
For Use in the Review of Private Development	)	NO.
Projects Subject to the San Joaquin Valley Air	)	
Pollution Control District's Indirect Source Rule	)	
And Requiring County of Tulare Discretionary	)	
Land Use Entitlements	)	

WHEREAS, the San Joaquin Valley Unified Air Pollution Control District ("District") is responsible under the Clean Air Act ("Act") and California law, for adopting and enforcing regulations within its jurisdiction to meet national air quality standards set by the Environmental Protection Agency (EPA); and

WHEREAS, pursuant to this responsibility and duty, the District has adopted and may amend from time to time Rule 9510, commonly known as the "Indirect Source Rule" (ISR), which requires certain site specific, private development projects to reduce the amount of identified pollutants it may emit through both construction and operation activities; and

WHEREAS, Rule 9510 applies to any development that includes 50 residential units, 2,000 square feet of commercial space, 25,000 square feet of light industrial space, 100,000 square feet of heavy industrial space, 20,000 square feet of medical office space, 39,000 square feet of general office space, 9,000 square feet of educational space, 10,000 square feet of government space, 20,000 square feet of recreational space, or 9,000 square feet of space that does not fit one of the other categories; and

WHEREAS, according to *Nat'l Ass'n of Home Builders v. San Joaquin Valley Unified Air Pollution Control Dist.*, 627 F.3d 730, Rule 9510 is a proper indirect source review program under section 110(a)(5) of the Clean Air Act; and

WHEREAS, under Indirect Source Review, a developer can reduce or mitigate emissions by incorporating pollution-reducing features in its project, or by paying a fee to fund offsite projects that will reduce emissions, or by a combination of the two; and

WHEREAS, under Rule 9510, the applicant for a new development project is required, for those projects requiring County of Tulare discretionary land use entitlements, to submit an air quality

impact assessment (AIA) to the District before or at the project's final discretionary approval by the County of Tulare; and

WHEREAS, even if an applicant satisfies its obligations for its proposed development project under Rule 9510 and fully complies with Indirect Source Review, this does not necessarily represent substantial evidence unto itself that a project's air quality impact for the contaminants addressed by that rule is reduced to a level less than significant or no impact under the California Environmental Quality Act (CEQA); and

WHEREAS, the County of Tulare is required to comply with CEQA before approving discretionary land use entitlements for any site specific, private development project subject to the Rule 9510;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. It shall be a policy of the County of Tulare to independently review and consider all credible evidence available to it in determining whether a private development project adequately and feasibly reduces and mitigates any potential air quality impacts to a level of less than significant or no impact as provided under and required for the purposes of CEQA review, in addition to and regardless of whether that project complies with the San Joaquin Valley Air Pollution Control District Rule 9510.
2. If the County of Tulare's independent review determines that the reductions of air contaminants made by a site specific, private development project in compliance with Rule 9510 does not adequately reduce or mitigate any potentially adverse air quality impacts to less than significant or no impact levels as addressed by CEQA, the County will consider and require any additional mitigation measure that is reasonable, feasible and consistent with CEQA, particularly 14 Ca. Code Regs. Sections 15040 (Authority to Mitigate) and 15364 (Definition of "Feasible").
3. This policy shall only apply to those site specific, private development projects requiring County of Tulare discretionary land use entitlements to build and operate but not to any general programmatic Environmental Impact Reports or planning projects such as area General Plan Amendments, Specific Plan Amendments, Community Plan Amendments, zoning amendments or

other regulatory document amendments applying to more than a single, site specific, private development project.

The foregoing resolution was adopted on motion of Supervisor \_\_\_\_\_,  
seconded by Supervisor \_\_\_\_\_, at a regular meeting of this Board of  
Supervisors held on \_\_\_\_\_, 20\_\_, by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ATTEST: JEAN ROUSSEAU, COUNTY ADMINISTRATIVE OFFICER/  
CLERK BOARD OF SUPERVISORS

By: \_\_\_\_\_

\*\*\*\*\*

JJR/2014931/702192  
02-04-2015





**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

In the Matter of	)	R E S O L U T I O N
Protocols for Enhanced Public Participation	)	N O .
In a "New Town" Land Use Review	)	

WHEREAS, the Board of Supervisors recognizes the value of public participation in land use planning, especially when establishing planned communities called "new towns", and

WHEREAS, the Board of Supervisors desires to enhance public participation during the planning of new towns by those nearby residents of Tulare County most affected by the new towns; and

WHEREAS, the Board of Supervisors wants to establish enhanced public notice requirements for this purpose which shall be called "Protocols for Enhanced Public Participation in New Town Land Use Review":

NOW, THEREFORE, BE IT RESOLVED that any "New Town" project will be proposed and considered through a comprehensive, transparent process that encourages informed public input as follows:

1. Any "new town" proposal requires a General Plan Amendment to the County's existing land use designation maps or diagrams to designate the "new town", formally known as a Planned Community Area.
2. The County must adopt all required policy and regulatory documents and plans including, but not limited to, a specific, community or master development plan and an infrastructure master plan for the "new town" area. A Public Financing Agreement or similar agreement may also be required as a condition of approval of the "new town".
3. The land use designation map or diagram amendment and the policy and regulatory documents and plans described in paragraph no. 2 shall be reviewed as provided in the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et. seq. The public

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comment period otherwise required by that statute on a Draft Environmental Impact Report ("EIR") prior to preparation of a Final EIR shall be a minimum sixty (60) days.

4. The designation map or diagram amendment and all policy and regulatory documents and plans described in paragraph two (2) shall be considered sequentially by the Tulare County Planning Commission and then by the Board of Supervisors at separately noticed public hearings.

5. In addition to any statutory requirements found in the California Government Code, Title 7. Planning and Land Use, sections 65000 et seq., or CEQA applicable to the "new town" planning process or any part thereof, the County shall hold the following additional meetings:

A. County staff shall hold one or more evening "town hall" meetings in communities within five (5) miles of a proposed new town if such communities have adequate meeting facilities, prior to or during the CEQA public comment period on the Draft EIR.

B. The Tulare County Planning Commission and Board of Supervisors may hold one or more joint meetings or workshops at any time during a new town planning process.

C. The Board of Supervisors will hold at least part of a noticed public hearing during evening hours on a "new town" project General Plan Amendment and specific, community or master development plan before making a final decision.

6. The executive summary of the EIR and the project descriptions and land use maps set out in the specific, community, or master development plan for a "new town" project shall be

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translated into Spanish or the most commonly-spoken language, apart from English, by the residents within 5 miles of the proposed new town.

The foregoing resolution was adopted on motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, at a regular meeting of this Board of Supervisors held on \_\_\_\_\_, 201\_\_\_\_, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

ATTEST: JEAN ROUSSEAU, COUNTY ADMINISTRATIVE OFFICER/  
CLERK BOARD OF SUPERVISORS

By: \_\_\_\_\_

\*\*\*\*\*

JJR/2014930/682887  
02-04-2015

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Attorneys for Respondents  
 COUNTY OF TULARE and TULARE  
 COUNTY BOARD OF SUPERVISORS

SUPERIOR COURT OF THE STATE CALIFORNIA  
 FOR THE COUNTY OF TULARE

SIERRA CLUB,

Petitioner,

v.

COUNTY OF TULARE, TULARE  
 COUNTY BOARD OF SUPERVISORS,  
 and DOES 1-25,

Respondents.

CASE NO. 249061

Action Filed: September 28, 2012  
 Hearing on Writ Petition:

**[PROPOSED] JUDGMENT  
 PURSUANT TO STIPULATED  
 SETTLEMENT**

(CEQA Matter Under Public Resources  
 Code § 21000, et seq.)

Time:  
 Date:  
 Dept: 1  
 Judge: Hon. Melinda Reed

1 WHEREAS, Petitioner Sierra Club ("Petitioner" or "Sierra Club") and Respondents  
2 County of Tulare and Tulare County Board of Supervisors ("County" or "Respondents")  
3 have agreed to the Stipulated Settlement attached hereto as Exhibit A and incorporated  
4 herein by this reference, and;

5 Good cause appearing, it is ORDERED that the Stipulated Settlement is entered as the  
6 Final Judgment in this matter. The Stipulated Settlement is intended to serve in lieu of any  
7 determination by this Court as to the merits of Petitioners' allegations in the litigation.  
8 Petitioners' actions are hereby dismissed with prejudice, except that jurisdiction is retained  
9 for the limited purposes set forth in Section XV.3 of the Stipulated Settlement until  
10 expiration of the Stipulated Settlement.

11  
12 **IT IS SO ORDERED.**

13  
14 DATED: \_\_\_\_\_, 2015

15  
16 JUDGE OF THE SUPERIOR COURT

17  
18 W:\C\362\005\00349466.DOC





## SERVICE LIST

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**PROOF OF SERVICE**

STATE OF CALIFORNIA       )  
  ) ss.  
COUNTY OF LOS ANGELES    )

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 11999 San Vicente Boulevard, Suite 150, Los Angeles, California 90049.

On February 24, 2015, I served true copies of the following document(s) described as **[PROPOSED] JUDGMENT PURSUANT TO STIPULATED SETTLEMENT** on the interested parties in this action as follows:

☒ **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with The Sohagi Law Group, PLC's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ **BY FAX TRANSMISSION:** I faxed a copy of the document(s) to the persons at the fax numbers listed in the Service List. The telephone number of the sending facsimile machine was (310) 475-5707. No error was reported by the fax machine that I used.

☐ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address cmcaleece@sohagi.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **BY OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

☐ **BY PERSONAL SERVICE:** I personally delivered the document(s) directly to the person(s) being served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 24, 2015, at Los Angeles, California.

Cheron J. McAleece  
Printed Name

  
Signature

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**PROOF OF SERVICE**

STATE OF CALIFORNIA       )  
  ) ss.  
COUNTY OF LOS ANGELES   )

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 11999 San Vicente Boulevard, Suite 150, Los Angeles, California 90049.

On March 9, 2015, I served true copies of the following document(s) described as **NOTICE OF ENTRY OF JUDGMENT PURSUANT TO STIPULATED SETTLEMENT** on the interested parties in this action as follows:

☒ BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with The Sohagi Law Group, PLC's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ BY FAX TRANSMISSION: I faxed a copy of the document(s) to the persons at the fax numbers listed in the Service List. The telephone number of the sending facsimile machine was (310) 475-5707. No error was reported by the fax machine that I used.

☐ BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address cmcaleece@sohagi.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.


☐ BY PERSONAL SERVICE: I personally delivered the document(s) directly to the person(s) being served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 9, 2015, at Los Angeles, California.

Cheron J. McAleece

Printed Name

  
Signature



SERVICE LIST

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